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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1947

No. 796

J. R. MASON,
Petitioner,

vs.

MERCED IRRIGATION DISTRICT,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
to the United States Circuit Court of Appeals
for the Ninth Circuit.

X J. R. MASON,
1920 Lake Street, San Francisco, California,
Petitioner in Propria Persona.

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INDEX

CITATIONS

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To the Honorable Fred M. Vinson, Chief Justice of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States:

J. R. Mason prays that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals for the Ninth Circuit, entered in the above case, affirming the decree of the United States District Court.

OPINION BELOW.

The order and decree of the District Court (R. 95/98). The opinion of the Circuit Court of Appeals (R. 212/219) is reported in 165 Fed. (2d) 634.

JURISDICTION.

The judgment of the Circuit Court of Appeals was entered January 19, 1948 (R. 212). The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code (28 U.S.C., sec. 347(a)).

QUESTIONS PRESENTED.

1. When bonds are lawfully issued by a State, or by its instrumentality, has Congress authorized its Courts to intervene and disallow such public debt under Chapter IX of the Bankruptcy Act, where that action would contravene provisions of the U. S. Constitution?

2. Whether the decree of the Circuit Court goes beyond the petition?

3. Whether respondent has shown any standing to claim or receive the fund *in custodia legis*?

4. Whether the fund *in custodia legis* is a trust fund governed and controlled by Judicial Code, Sections 851-852, Title 28, when a Chapter IX final decree contains no time limitation within which claims may be presented?

5. Whether the decree, as applied, contravenes the Land Laws of California controlling the tenure of land in its domain?

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED.

The statutes pledging the payment of petitioner's claim are Statutes 1897, page 254 as amended, Deering's General Laws, Act 3854, page 1792, codified as Statutes 1943, Chapter 368, Division 10, 11 being the Water Code of California. The fund *in custodia legis* is based on Chapter IX of the Bankruptcy Act, 11 U.S.C.A., Sections 401-403 and Judicial Code, Sections 851-852, Title 28. The Constitutional Provisions are Article I, Section 10, clause 1 and the Fifth and Fourteenth Amendments of the U. S. Constitution.

SPECIFICATIONS OF ERROR TO BE URGED.

The District Court erred in permanently enjoining the holders of valid, binding and unpaid bonds issued pursuant to the authority of a State to borrow money "from asserting any claim whatsoever against said debtor based on said bonds or coupons."

2. The Circuit Court, upon finding that "there was and is no such statute", as contended by respondent, erred in not dismissing the petition forming the base of the instant case.

3. The Circuit Court erred in giving the money *in custodia legis* to respondent in the absence of any

showing or proof that respondent has any standing to claim or receive it.

4. The Circuit Court erred in allowing the fund *in custodia legis* to be disbursed contrary to the conditions specified in the final decree, and contrary to the Judicial Code, Sections 851-852, Title 28.

5. The Circuit Court erred in not finding that the decree, as applied contravenes the Land Laws of California, and is *ultra vires*.

STATEMENT.

This case involves the vested statutory and Constitutional rights of petitioner, the owner and holder of $17,000 valid, binding and unpaid original, unrefunded bond obligations of Merced Irrigation District, respondent. These bonds have endorsed on each of them the Seal of the State of California, and a certificate signed by the State Controller, pursuant to Statutes 1913, page 778, making the bonds a lawful investment in California for savings banks, trust funds and insurance companies, and eligible to secure public deposits. This certification is unqualified, and the bonds are still legal for the investment of such funds under the laws of California. (R. 175.)

Respondent is a political subdivision of the State within the meaning of 26 U.S.C.A., Section 1065(b), according to 72 Ops. Atty. Gen. 38, February 4, 1937. Interest from the bonds is Federal Income Tax exempt.

The rights and obligations of the parties have been clearly and unequivocally construed and applied by this Court and also by the Supreme Court of California. The validity of petitioner's claim is not questioned. Respondent is a statutory trust of land within the domain of California, the operation of which this Court has held impairs no Constitutional right. The rights and obligations under such a land trust are governed by State law and decisions, exclusively, according to a very long line of cases by this Court.

Respondent borrowed money to finance the cost of large public improvement works, issuing two bond issues therefor dated January 1, 1922 and May 1, 1924, due serially 1934 to 1964 without option of prior payment, and bearing fixed interest coupons at 5½% and 6%, payable semi-annually, which interest it paid until January 1, 1933. Petitioner has received no interest or principal since 1932.

The first attempt to enforce the plan of composition upon minority holders of original bonds, under the original Chapter IX was not allowed (89 F. (2d) 1002) and certiorari was denied by this Court, as reported in *Merced I. D. v. Bekins,* 302 U. S. 709.

The second attempt to enforce the same plan of composition upon petitioner was begun June 17, 1938, whereupon petitioner again filed his claim and set up his defenses.

Petitioner has never subjected his claim to bankruptcy jurisdiction except for the special purpose of objecting to such jurisdiction. Petitioner's claim was

recognized by the final decree of 1941 as a "still outstanding" obligation. (R. 27.)

The instant proceeding was commenced by the respondent filing a petition July 23, 1946, in which it contended that the statute of limitations applicable to the "still outstanding obligations" had run, "That said bonds and coupons listed in Exhibit 'C' are barred by the statute of limitations and that pursuant to the provisions of the final decree above quoted, petitioner so reports to this Court * * * Wherefore, petitioner prays that the unexpended funds in the hands of the registrar * * * be paid by said registrar to petitioner. * * *" (R. 30/40.)

Respondent insisted in the District Court that this petition is based upon "statutory and substantive rules of (State) law", and contended that "the Court can not exercise discretion in the premises but can only apply the law as it exists." (R. 55.) Petitioner agreed that State law and decisions should control decision in this case, and objected to acceptance by the District Court of Federal jurisdiction, urging that the Court "leave to the Courts of California the matter of fixing the rights of the parties." (R. 43.)

The District Court on finding no applicable statute, denied the petition, as shown in the November 15, 1946 minute order. (R. 57.) Because of objections to new provisions in the order proposed, which went beyond the petition, it was not signed. (R. 59.) The District Court later ruled that the statute of limitations had run, and allowed the petition December 31,

1946. (R. 76.) The Circuit Court of Appeals found that "There was and is no such statute" but affirmed the decree of the District Court, despite the original vigorous contention of respondent that the District Court "can only apply the law as it exists." (R. 55.) The effect of this 1947 decree is to modify specific provisions in the final decree of 1941, prejudicially to petitioner and to cut down the period within which claims must be presented to 45 days, and ordering that unless the "still outstanding" bonds and coupons are surrendered within 45 days they will no longer "constitute valid claims against said debtor nor against said fund deposited by debtor with this Court. * * *"

Respondent, at no stage of the proceeding, showed any authority to claim the fund *in custodia legis,* and failed to prove or even show any pecuniary right, title or interest in or to it under any law, Federal or State, even had the statute run against the claim of petitioner. Respondent, unless the decree below is reversed, will be permitted to get an "unjust enrichment." For, as the District Court observed "The district certainly has no equities here" (R. 138), and "So if the money goes back to the district, it is simply in the nature of an unjust enrichment." (R. 139.)

Of the more than $15,000,000 borrowed by respondent in 1922 and 1924, it has refunded and cancelled all of the original bonds, on the basis of 50 cents on the dollar of principal, with nothing for defaulted statutory interest, excepting only the $17,000 original

"still outstanding" obligations owned by petitioner. The bulk of this refunding had been consummated out of Court prior to the disallowance by this Court of the same plan of composition in the case of *Merced I. D. v. Bekins,* supra.

The money *in custodia legis* to pay petitioner is less than the amount of the statutory interest alone now owing on petitioner's claim, with nothing at all for the principal sum specified in each bond.

If either party has been injured by the fund remaning *in custodia legis,* which draws no interest, it is not respondent, and petitioner has not been ordered by any decree to surrender his bonds or accept the fund *in custodia legis* as lawful payment. The record clearly shows there has been no such order. (R. 119/126, 181/199.) Respondent has shown no standing to claim the fund *in custodia legis* put there for the benefit of the holders of "still outstanding obligations", and for no other disposition. Nothing ordered by any Court restrains respondent from honoring its "Still outstanding obligations" by paying them according to State law and decisions. Thereafter, on showing that no claims upon this fund are still outstanding, there would be no one entitled to object to its disbursement as the Court might order.

REASONS FOR GRANTING THE WRIT.

I.

THE CIRCUIT COURT HAS DECIDED THAT WHEN BONDS ARE LAWFULLY ISSUED BY A STATE, OR BY ITS INSTRUMENTALITY THAT THE CONGRESS HAS AUTHORIZED ITS COURTS TO INTERVENE AND TO DISALLOW SUCH PUBLIC DEBT IN A PROCEEDING UNDER CHAPTER IX OF THE BANKRUPTCY ACT, WHERE THAT ACTION CONTRAVENES PROVISIONS OF THE UNITED STATES CONSTITUTION.

In this period of global crisis, when the effects of intervention and usurpation of power abroad are so fatal to the most basic rights of man, and with great respect, but without apology the undersigned J. R. Mason respectfully urges that this Court review the basic constitutional principles controlling the rights and obligations affected by the decree of the Circuit Court of the United States, for the Ninth Circuit, which decree, it is submitted does not square with the doctrine of reciprocal immunity as traditionally interpreted and enforced by this Court. This principle was not abandoned by anything said in the case of *U. S. v. Bekins,* 304 U. S. 27 and has been steadfastly adhered to in all later decisions by this Court.

Arkansas Corp. v. Thompson, 312 U. S. 673, 313 U. S. 362;

Great Lakes Co. v. Huffman, 319 U. S. 293;

Meredith v. Winter Haven, 320 U. S. 228;

Huddleson v. Dwyer, 322 U. S. 232;

Bankers Tr. Co. v. New York, 323 U. S. 714;

Guaranty Tr. Co. v. York, 326 U. S. 99;

Gardner v. State of N. J., 329 U. S. 565.

Petitioner is not questioning the power of Congress to enact Chapter IX of the Bankruptcy Act (11 U.S.C.A., 401-403) the base of this litigation, but only its application in this particular case and which application has the force and effect of revoking a contractual obligation issued by the State of California, or its instrumentality for governmental uses and purposes, and secured against Federal impairment or disallowance by the Fifth Amendment to the Constitution of the United States. The Federal Income statutes are also "not unconstitutional", but it is still the rule that Congress may not tax the interest from the bonds at bar. That the bonds owned by petitioner are within this class was decided in 1914 in 30 Ops. 252, and reaffirmed in 1937 in 38 Ops. 563 by the U. S. Attorney General. These opinions have not been modified by any Court decisions.

The Constitution and Legislature of California authorized the issuance of the bonds owned by petitioner and made full statutory provisions for their payment. The validity of this legislation has been affirmed by this Court and by the California Supreme Court.

Fallbrook I. D. v. Bradley, 164 U. S. 112;
Tulare I. D. v. Shepard, 185 U. S. 1;
Roberts v. Richland I. D., 289 U. S. 71;
Shouse v. Quinley, 3 Cal. (2d) 357;
Moody v. Prov. I. D., 12 Cal. (2d) 389.

These acts of the California Legislature authorizing the issuance of the bonds and contracting for their payment became a part of the State's contract, and in

effect, these provisions are embodied in the bonds themselves, leaving no doubt of the intention of the parties that the State legislation should be read into the contract.

This contract is an exercise of the sovereign power of the State to borrow money for uses and purposes authorized by the Constitution of California, and it does not owe its creation or existence to any power delegated to the Federal Government.

This Court has adhered to the principle of immunity, as declared in *Ohio Life Ins. Co. v. Debolt*, 16 How. 415:

> "* * * whether such contracts should be made or not, is exclusively for the consideration of the State. It is the exercise of an undoubted power of sovereignty which has not been surrendered by the adoption of the Constitution of the United States, and over which this Court has no control."

The *U. S. v. Bekins* case, supra, involved no facts as an actual controversy, notwithstanding which fact this Court was very definite in warning that Chapter IX does not allow a Court of the Congress to "contravene provisions of the Federal Constitution." (304 U. S. 27, 52.)

Nothing in the statutes authorizing petitioner's claim gives different rights to large investors, or permits the vested rights of the holder of even one bond to be revoked. It is well settled that parties may not create statutory rights or federal jurisdiction by

waiver or consent. It was recently reaffirmed by this Court in *U. S. v. Carmack,* 67 S. Ct. 252, at 255 that

> "If the U. S. have the power it must be complete in itself. It can neither be enlarged or diminished by a State. * * * The consent of a State can never be a condition precedent to its enjoyment."

The bonds owned by petitioner were issued in 1922 and 1924 and not until Statutes 1939, Chapter 72, was there any California law consenting to any Federal jurisdiction. But neither State consent nor submission can create powers not otherwise vested in Congress by the U. S. Constitution.

That there is great conflict on this in the Courts below is evident. In *Mission School Dist. v. Texas,* 116 F. (2d) 175; *Spellings v. Dewey,* 122 Fed. (2d) 652, and *Green v. City of Stuart,* 135 F. (2d) 33, it is said that Chapter IX contains "an express requirement that nothing shall be agreed on which the State law does not enable it to do", and that

> "Chapter IX is a special exercise of the bankruptcy jurisdiction, is dependent on State consent and is limited to that consent."

The cases of *In re Beardstown Dr. Dist.,* 125 F. (2d) 13 and *In re Summer Lake I. D.,* 33 F. Supp. 504, hold that the State consent is immaterial, and unnecessary to the jurisdiction authorized under Chapter IX.

This Court in the *Bekins* case said (304 U. S. 27):

> "It should also be observed that Sec. 83-e provides as a condition of confirmation of a plan

> of composition that it must appear that the petitioner 'is authorized by law to take all action necessary to be taken by it to carry out the plan' and, * * * The phrase 'authorized by law' manifestly refers to the law of the State."

That the District Court, in the instant case considers that State law and decisions may be disregarded, is shown by the comment of that Court, as follows:

> "I have told you that under the provisions of the Bankruptcy Act there was a transformation, a modification of these obligations. There is no way of talking the Court out of that view, because that has been settled." (R. 118.)

> "Of course, your argument is contrary to the views of the Court on the origin and status of these obligations * * * I think it is a contractual obligation, and unfortunately and unhappily the Supreme Court has said that repudiation of a debt is justified under the distressful circumstances that confronted these districts during the period involved * * * This Court does not have any leeway and can not say that the Supreme Court did not mean what it said in the Bekins case". (R. 114.)

Merced Irrigation District is a statutory trust of restricted land within the domain of California, protected from enclosure by the venerable State law securing the payment of petitioner's claim. No question of whether this land is within the Federal domain is raised, as in *U. S. v. California,* 332 U. S. 19. Nor is this State law discriminatory, as was the law in the

Oyama v. California case decided by this Court on January 19, 1948. No decision by this Court is shown allowing any federal interference with a non-discriminatory State land law.

There is no showing or even claim that respondent lacks ample taxing power to pay petitioner's claim or lacks the money to pay it, with defaulted interest as required by applicable statutes.

In 43 *Corp. Jur.*, p. 211, it is declared:

> "As the state may not, by any law or contract, surrender or restrict any portion of the sovereignty which it holds in sacred trust for the public weal, so a municipal corporation, as a governmental agency, can not surrender or contract away its governmental functions and powers, *nor such functions as are regarded as mandatory, and any attempt to barter or surrender them is invalid.*" (Italics added.)

None of the bonds herein involved have reached maturity, except three bonds (R. 38/39) and some of them do not mature until 1961. The bonds are non-callable and may not be lawfully redeemed before maturity, nor can taxes be levied or collected to pay them until the year before they mature. Manifestly it does not lie within the inherent powers vested in the Congress either to create or cancel the lawful debts of a State, or of its instrumentalities, any more than it lies within the powers vested in a State to create or cancel Federal obligations.

Such intervention in the internal land affairs of another sovereign has opened Pandora's Box, wherever it has happened, and whether favored by the extreme right or the extreme left.

The current drive to have the Congress "quit claim" its rights in and to the Tidelands, as construed by this Court in *U. S. v. California,* is in striking contrast to the viewpoint of the same State officals when Federal interference has the effect as here, of allowing private interests to misappropriate more unearned increment than the law allows. See the brief filed by eleven Attorneys General urging a rehearing after decision by this Court in the *Ashton v. Cameron County* case, 298 U. S. 513. This Court commented on that petition for a rehearing, and reaffirmed that the bonds at bar, in the instant case, are immune from Federal destruction, in *Brush v. Comm.,* 300 U. S. 352, 366-9.

Whether the rent value of the restricted land within Merced Irrigation District is collected by way of an annual tax or assessment, as required by State law, or whether the obligation of landholders to pay the tax is interfered with, can not and will not affect the rewards of the working farmer, as a worker, nor add to living costs.[1] Its collection by the State would serve to make it more costly for speculators to hold land idle or underimproved. There is no tax on buildings, planted orchards, vineyards or other improvements, under this law.

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[1]Wealth of Nations, Bk. V, Ch. II, Part 2, Adam Smith.

The vested right of petitioner to payment of his claim from such ground rent was settled in *Provident v. Zumwalt,* 12 Cal. (2d) 365 (1938).

This judgment was again cited, with approval on December 30, 1947, in the case of *Long Beach v. Morse,* 31 Adv. Cal. 283, at 287 when the Supreme Court disallowed the attempt to misapply the proceeds of a similar trust of land, although no bondholder's claim was before the Court in that case.

In the *Bekins* case, supra, this Court further admonished:

> "The reservation to the States by the 10th Amendment protected and did not destroy their right to make contracts *where that action would not contravene the provisions of the Federal Constitution.*" (304 U. S. at 52.) (Italics supplied.)

This Court set aside a judgment by the Federal Court, long after it had supposedly become final in the case of *Huddleson v. Dwyer,* 322 U. S. 232, which case also involved the rights and obligations of bondholders and a State instrumentality, on a showing that the Federal decree conflicted with State law and decisions. The above decisions by the California Courts clearly and unequivocally adjudicate the law controlling the rights and obligations of the parties, and unless this Court sets aside the decree in the instant case, it can only mean that there is now one principle of constitutional law applicable when a bondholder sues a State or its instrumentality, and a different one must be applied when a local government sues a bondholder. In other words, is State

law and decisions supreme and paramount when a bondholder sues for payment of his claim, and is Federal law paramount when a local government files an action to be relieved from paying those with whom it has made lawful contracts? The mere fact that most bondholders accepted a compromise in 1935 can have no effect on the jurisdictional principle, nor can any conduct by other bondholders repeal or amend the Constitution and the State laws applicable to the claim of petitioner, which claim was again validated by Senate Bill 4 enacted this year by the California Legislature. This legislation provides:

> "All such bonds heretofore issued, or heretofore authorized to be issued when hereafter issued in substantially the form contemplated in such authorization, shall be, in the form and manner in which issued and delivered, the legal, valid and binding obligations of the public body."

The conflict between this law and the District Court decree which contains the following language is glaring, as follows:

> "That all outstanding bonds and coupons of the above named debtor * * * do not now constitute valid claims against said debtor nor against said fund deposited by debtor with this Court. * * *" (R. 96.)

Respondent has not, in the Court below shown any California law or decision consistent with the District Court decree that the bonds owned by petitioner "do not now constitute valid claims", and the following State decisions are submitted as further proof that

this Federal Court decree conflicts with controlling State law.

In re Madera Irr. Dist., 92 Cal. 308;
Bd. of Directors v. Tregea, 88 Cal. 334;
Selby v. Oakdale I. D., 140 C. A. 171;
Meyerfeld v. So. San Joaquin, 3 C. (2d) 409;
Shouse v. Quinley, supra;
Moody v. Provident, 12 C. (2d) 389.

II.

WHETHER THE DECREE OF THE CIRCUIT COURT GOES BEYOND THE PETITION?

The instant case is bottomed on the petition filed by respondent July 24, 1946, in the District Court. (R. 30/40.)

This petition alleged that more than five years having elapsed since the entry of the final decree "That said bonds and coupons listed in Exhibit 'C' are barred by the statute of limitations * * * Wherefore, petitioner prays that the unexpended funds in the hands of the registrar * * * be paid by said registrar to petitioner. * * *" (R. 34.)

The Circuit Court of Appeals on finding that the District Court had erred in finding "That all outstanding bonds and coupons * * * are now barred by the statutes of limitation applicable thereto * * *" (R. 96) and announcing that "There was and is no such statute" (R. 217) should have reversed the District Court decree and dismissed the petition, which

was bottomed on the statute of limitations point, and no other reason or ground was presented in the petition which would entitle the bankrupt to a judgment, or to get the specific provisions in the final decree of 1941 revised or modified, as they are by the Circuit Court decree.

The final decree originally proposed did contain a specific time limitation within which the registrar would pay claims. (R. 22.)

Objections to the time limitation were duly presented. (R. 21.) The proposed final decree was accordingly amended by omitting a specified time limitation, and substituting therefor this provision: "If any money shall remain in the hands of the registrar after petitioner claims that the statute of limitations applicable to its still outstanding obligations, if any, has run, petitioner may so report for such further action * * * as this Court may determine to be proper * * *" (R. 27.) The final decree allowed the bankrupt no ground to claim the fund *in custodia legis,* until and unless the statute of limitation "applicable to its still outstanding obligations" had run, as a matter of law. The bankrupt insisted in the District Court that not only had the statute run but that "the Court would seem to have no jurisdiction except to order the money returned to the irrigation district. General equity authority would not seem sufficient to override a substantive rule of law. Once an appropriate statute of limitations has run the obligation to pay the money is extinguished." (R. 55.)

Instead of dismissing the petition, the Circuit Court adjudged that the only point upon which the petition rested "need not be considered; for, after reaching the conclusions mentioned, the Court concluded that it was 'nevertheless vested with equitable power and authority to authorize the owners of said bonds and coupons an additional period of 45 days' within which to surrender their claims."

The Circuit Court also erred in putting this 45 day limitation in its decree, after finding that the final decree "could have fixed a time within which the old bonds remaining unsurrendered should be surrendered to the clerk for retirement, but it did not." (R. 217.)

This is in striking conflict with the view expressed by the same Court in the case of *Mason v. Merced I. D.*, 126 F. (2d) 920, when the Court said:

> "* * * The question he now seeks to present is whether 'the final decree herein constitutes an interference with the political and governmental powers of the State' * * * has been subjected to 'interference' within the intendment of 11 USCA, Sec. 403, sub. c. This provides that the court, shall not, by any order or decree in the proceeding or otherwise, interfere with (a) any of the political or governmental powers of the petitioner; * * * Appellant says that 'the question of interference only arose upon the making and entry of the final decree'. Appellant is mistaken. If there was any interference of the nature complained of, the interference was effected by the interlocutory decree. * * * Appellant is

not now in a position to complain of the interlocutory decree."

It is significant that the Court did not deny there had been an "interference" prohibited "by an order or decree in the proceeding or otherwise", but only that if such prohibited interference had occurred, it occurred in the interlocutory decree, and that "Appellant is not now in a position to complain of the interlocutory decree."

Section 83 of the Bankruptcy Act, unlike Section 77, subdivision K, allows the Court no jurisdiction whatever after entry of the final decree, which was entered July 15, 1941 in this proceeding. (R. 26/29.)

An attempt to invoke the Court's jurisdiction "even though order of approval reserves jurisdiction to make further orders from time to time" was disallowed in *In re Flatbush Ave., Nevins St. Corp.,* 133 F. (2d) 763 by the Second Circuit when it observed:

> "Congress did not intend that the bankruptcy court should, after approval of a plan under Chap. X have power to remain a wet nurse. * * * A bankruptcy court can not obtain that power merely by inserting a provision reserving jurisdiction."

Respondent, having lost out in the contention that the statute had run, "is not now in a position to complain" of the final decree of 1941, and is not entitled to the change in its specific provisions, given it by the Circuit Court by its order. (R. 212/219.)

III.

WHETHER RESPONDENT HAS SHOWN ANY STANDING TO CLAIM OR TO RECEIVE THE FUNDS IN CUSTODIA LEGIS?

Respondent is a public trust, without pecuniary rights, and all of whose property is "State owned". *El Camino v. El Camino,* 12 Cal. (2d) 378.

There is no showing that respondent has any statutory standing to make any claim upon the fund *in custodia legis,* or that the fund is money that respondent ever did have any interest in, or claim to. Petitioner knows of no applicable State law allowing respondent to deposit any money with a Court of the Congress, and any deposits made in banks are permitted only strictly subject to statute.

The real source of the fund *in custodia legis* does not appear, and in the absence of a showing and proof that it lawfully belongs to respondent, the Circuit Court erred in ordering it forfeited to the respondent after 45 days, because the final decree of 1941 did not so provide.

The law governing escheat of funds under other chapters of the Bankruptcy Act is reviewed in *Louisville & RR. Co. v. Robins,* 135 F. (2d) 704.

No provision for any limitation of the time within which claims will be paid in Chapter IX proceedings has been made by the Congress.

In the case of *Compton Delevan I. D. v. Bekins,* 150 F. (2d) 526, it was squarely held that similar funds *in custodia legis* do not belong to the district. The District Court observed in the instant case: "The

district certainly has no equities here" (R. 138) and "So if this money goes back to the district, it is simply in the nature of an unjust enrichment." (R. 139.)

This "unjust enrichment" would accrue not to the district, as such, but to the private holders of the restricted trust land within the district, whose land taxes would be reduced by the amount of the fund now *in custodia legis,* when, as and if, the district is allowed this "unjust enrichment" and has succeeded in completely flouting the laws of California creating it, and has confiscated completely the vested property rights of petitioner for the further enrichment of its tax evading landholders, unless petitioner surrenders within 45 days. This is not the first time that districts have attempted action beyond their delegated authority. The strict way the State Court disallows conduct not expressly authorized is clearly shown in the case of *Meyerfeld v. So. San Joaquin I. D.,* 3 C. (2d) 357.

The title to money deposited in escrow, whether with a bank or with a Court, as here to be paid to specified claimants does not pass until all conditions of the escrow have been fulfilled. *Hildebrand v. Beck,* 196 Cal. 141, 146, 39 A. L. R. n. 1080; 19 Am. Jur. 426, Section 11.

In the instant case, the provisions of the escrow are embodied in the final decree of 1941. (R. 26/29.)

As the California Court observed in *Hastings v. Bank of America,* 79 Adv. Cal. App. 751 (1947) "Of

course a forfeiture could not have been declared either by the bank or by the Court, since forfeitures are abhorred."

Respondent did not claim in its petition that any forfeiture should be ordered unless its contention that the statute had run against the "still outstanding obligations" owned by petitioner, should succeed. Had that contention been successful, the 45 days allowed by the District Court for petitioner to claim the money would have been equitable, and respondent would have had no legal or equitable grounds to object. But, when the District Court found there was no such statute (R. 57) instead of dismissing the petition as requested (R. 59/71), the Court later adjudged that the statute had run. (R. 76/79). The Circuit Court found on this, the only point presented in the petition, "There was and is no such statute." (R. 217.)

Having so found, the Circuit Court should have ordered the petition dismissed, and should not have modified the conditions of the final decree of 1941 (R. 26) which controls this money in escrow, as it did by adding a time limitation prejudicial to petitioner, when no such limitation was provided in the final decree, which had become final more than five years before the instant petition was presented.

Respondent has shown no legal right to this money, and "The district certainly has no equities here." (R. 138.)

IV.

WHETHER THE FUND IN CUSTODIA LEGIS IS A TRUST FUND GOVERNED AND CONTROLLED BY JUDICIAL CODE, SECTIONS 851-852, TITLE 28, WHEN A CHAPTER IX FINAL DECREE CONTAINS NO TIME LIMITATION WITHIN WHICH CLAIMS MAY BE PRESENTED?

The administration of and disbursements from the fund *in custodia legis* is governed and controlled by the specific provisions of the final decree signed July 15, 1941, as shown in the record at page 26, and by the Judicial Code, Sections 851-852, Title 28, which contains no limitation of the time within which claims will be paid.

This point was presented in the specifications of error to the Circuit Court, as follows: "No showing was made that the bankrupt has any right, title or interest in or to any of this fund, the disbursement of which is governed by the provisions in Title 28, Judicial Code, Sections 851-852. * * *" The Circuit Court failed to pass on this specification of error, but said "Other contentions of appellant are so obviously lacking in merit as not to require discussion." (R. 219.)

California law absolutely prohibits tax evading holders of land within such districts ever acquiring ownership of land by prescription (Civil Code of Cal. §1007), and although the Legislature has provided a statute of limitations applicable to personal property which has escaped paying its taxes (Rev. & Tax. Code, Sec. 532), there is no statute entitling the holders of land to escape the land taxes required

by the laws of California. But, the force and effect of allowing the fund *in custodia legis* to be forfeited to this bankrupt, would be to allow the landholders to evade paying the land taxes required by the laws of California.

Provisions governing the surrender by petitioner of his bonds, are controlled by Stats. 1943, Chapter 368, Section 24735, as follows:

> "Any owner of any bonds * * * may surrender them to the district by giving the bonds * * * to the Secretary for cancellation." Section 24735 provides: "The Board shall then order the bonds * * * cancelled". Section 24737 provides: "Upon the making of the order, the bonds * * * shall cease to be an obligation of the district as of the time of the presentation to the secretary."

There is no California law requiring or authorizing the surrender of these bonds to the registrar of a Federal Court, much less ordering such surrender at any time, before the bonds are due.

Therefore it is clear, that surrender of the bonds to the Federal Court upon partial payment would not comply with the law of California, and the State law also leaves no doubt that until the bonds are surrendered according to State law, they do not "cease to be an obligation."

The bankrupt never claimed or even suggested that it could get the fund in dispute, unless the statute had run.

Counsel for the bankrupt argues this point as follows:

> "In other words, what our contention boils down to is that if a statute of limitations is applicable here, as we have pointed out, it must be when that has run, if a property right is acquired and the property right vests, it can not be divested, and that by virtue thereof the only thing the Court can do now is to turn the money back to the District". (R. 128.)

After ruling on the question of the statute informally, counsel for the bankrupt further said:

> "If the Court please, the court's decision in this matter was that there was no applicable legal statute of limitations applying, as we contended, but that that situation was to be governed by principles of equity. I think the Court fully recognized that it can not compel Mr. Mason to surrender his bonds and accept the composition rate, and I think it so stated." (R. 181.)

Later the District Court ruled that the statute had run (R. 95/96) and this was reversed by the Circuit Court upon appeal. (R. 217.)

The fund *in custodia legis* draws no interest, and any delay in withdrawing it is costing respondent nothing.

Petitioner has been enjoined for a great many years from any recourse to the State Courts.

Although no injunction is permitted after final decree in a Chapter IX proceeding, and objection was duly made (R. 21) it was not deleted from the final decree, and was again inserted in the 1946 decree. (R. 95.)

Petitioner has never conceded that his bonds are subject to federal bankruptcy jurisdiction, any more than is other indebtedness of a sovereign State or its instrumentalities. He has been shown no opinion by this Court so ruling, but he knows of a very great many annunciations since the *Pollock v. Farmers L. & T. Co.*, 158 U. S. 601, case, supporting his stand.

If the doctrine of reciprocal immunity has not been abandoned, it is urged that the Court accept this petition and clearly say so.

Petitioner is attempting to defend the Constitution and laws as construed by this Court, not to defy them, nor to be hoodwinked.

If respondent will obey the applicable California laws, there could be no objection raised to the registrar paying this fund out, in any way the District Court directs. Until that time respondent clearly has no standing to claim or receive that money, nor to appeal to equity, in face of the record in the instant case. (R. 105/199.)

The Circuit Court decree changes specific provisions in the final decree of 1941 prejudicially to petitioner, in that unless he accepts within 45 days less than the statutory interest alone on his claim, with nothing for principal of bonds, respondent gets the money in *custodia legis* which it has shown no right, title or interest in or to, and petitioner's claim, although wholly unpaid, is decreed a nullity.

V.

WHETHER THE DECREE, AS APPLIED, CONTRAVENES THE LAND LAWS OF CALIFORNIA CONTROLLING THE TENURE OF LAND IN ITS DOMAIN?

In addition to the points submitted above, the decree, as applied, arrests the operation of a non-discriminatory land and tax law, the execution of which by respondent, was irrevocably contracted when respondent, as a State instrumentality borrowed the money evidenced by petitioner's bonds and coupons. Any State law arresting such operation comes within the prohibition of the Constitution. But, as that can not be done circuitously which may not be done directly, the State is restrained from passing any act allowing the Congress, or any other sovereign government the authority to arrest the levy and collection of land taxes that State law has made necessary.

Whatever may be the rule of expediency, the constitutionality of a judicial decree depends not on the degree of its exercise, but on principle.

As this Court observed in *Providence Bank v. Billings,* 4 Pet. 514 at 560:

> "Land, for example, has been granted by government since the adoption of the Constitution. This grant is a contract, the object of which is that the profit issuing from it shall inure to the benefit of the grantee. Yet the power of taxation may be carried so far as to absorb these profits. Does this impair the obligation of contracts? The idea is rejected by all."

The obligation of contract in a bond issued by a State, or its instrumentality has been differently construed by this Court.

Murray v. Charleston, 96 U. S. 432;
Spencer v. Merchant, 125 U. S. 345;
Ex parte Virginia, 100 U. S. 339;
Fallbrook I. D. v. Bradley, supra;
Roberts v. Richland I. D., 289 U. S. 71;
Huddleson v. Dwyer, 322 U. S. 232.

Merced Irrigation District is a statutory trust of restricted land within the sovereign domain of California. It has no authority or standing to urge on behalf of its taxpayers that the taxes required by law be curbed. Nor has it authority to urge that because some bondholders have accepted 50¢ for their bonds in 1935, that petitioner's claim can be dishonored. The controlling State laws allow neither. All the land within each irrigation district "shall be held by such district, in trust for, and is hereby dedicated and set apart to the uses and purposes set forth in this Act." (Stats. 1909, p. 1075.)

The continuing right of each holder of bonds issued under this law to payment not only from land taxes and water tolls, but also from ground rent was settled in *Provident v. Zumwalt,* 12 C. (2d) 365 (1938):

> "On this point, namely, that the land is trust property, held for the 'uses and purposes' of the act, and that the proceeds (rents, issues and profits) are stamped with the character of the property from which they flow, the statute read in the light of elementary principles, leaves no room for debate."

The State law securing petitioner's claim was again construed by the Circuit Court, which reversed the District Court, and ruled that the non-payment of irrigation district assessments resulting in the forfeiture of land title deeds violates no right secured by the Constitution. *Fallbrook v. Cowan,* 131 F. (2d) 513. (Cert. denied.) This case involved a petition under Section 75 of Bankruptcy Act. Hence the operation of this State law may not be arrested under the bankruptcy clause when a petition is filed by the taxpayer. Can it be that a contrary rule applies when the petition is filed, as here, by the tax collector, asking a Federal Court for permission to ignore and violate the tax laws of its creator, the State of California?

In *Selby v. Oakdale Irrigation District,* 140 Cal. App. 171 the California Court pointed out

> "that when the statute under which the tax-levying board has acted prescribes what shall be done, and grants the power to act in a particular manner, all actions different therefrom dependent simply upon the whim, wish or determination of the tax-levying body are *ultra vires,* and the act taken can only stand in so far as it complies with the express authority given and provided for by law." (pp. 177, 178.)

Stats. 1943, Chapter 368, Section 26301 provides:

> "Where property has been conveyed to a district by a collector's deed, *the district shall have the same rights in respect to the property and its rents, issues, and profits as a private purchaser.*" (Italics added.)

Neither respondent nor any person appears to argue that the operation of this law threatens any right secured by the Constitution, or that this land law if fully executed would be discriminatory.

This Court recently had occasion to interpret another land law of California in the Case No. 44, *Oyama v. California,* decided January 19, 1948. Five opinions were issued in that case, but the California Supreme Court was overruled. Here the picture is reversed, the California Supreme Court has clearly and unequivocally ruled that the claim of petitioner is a first encumbrance upon the rent of all land within the boundaries of respondent, ranking ahead of mortgages, whenever made, and a continuing obligation until fully paid, with interest.

State officials urged this Court to affirm the State Court decision in the *Oyama* case. Here, only petitioner is asking that.

SUMMARY.

Merced Irrigation District, respondent here, is a statutory trust of land within the dominion and sovereignty of the State of California, and governed by State law, only. Such legal rights and obligations are not within the field of "commerce", as traditionally defined by this Court.

The instant dispute is but another facet of the bitter conflict revealed in the recent public hearings of a subcommittee of the Committee on Public Lands,

U. S. Senate, 80th Congress, 1st Session, on S. 912, May 1947 statement of Rev. W. J. Gibbons, S. J., director, National Catholic Rural Life Conference, pages 496-528; and John F. Shelley, president, San Francisco Labor Council, pages 1184-1188; also exposed in Committee Print No. 13 of the Special Senate Committee on Small Business of the 79th Congress, 2nd Session. The hearings on S. 912 contain 1329 pages.

More than 50 years ago it was argued before this Court by counsel George H. Maxwell, Esq., that the statute creating and governing the rights and obligations here involved "is communism and confiscation under guise of law". This argument is printed in the U. S. Law Reports, preceding the historic decision by this Court in the *Fallbrook Irrigation District v. Bradley* case, supra which reversed the Circuit Court opinion.

With the possible exception of the provision in the Reclamation Act of 1902 limiting the acreage in one ownership that can get water from a federal project to 160 acres, there is perhaps no other land tenure law that has been as frequently and implacably fought in the Courts and out, as this venerable California statute, which petitioner has tried to defend. He has filed many petitions in *propria persona,* and also through counsel attempting to point out the economic and political dangers of allowing federal intervention in this field, and has also presented many petitions for rehearing under 11 U.S.C.A. 401-403, and a brief opposing the petition for a rehearing filed after this

Court denounced 11 U.S.C.A. 301-304 as repugnant to the U. S. Constitution, in the *Ashton* case, October Term, 1935. It is petitioner's contention that unless and until this Court expressly reverses the basic principle of immunity as interpreted in the *Ashton* case, and in all opinions after the *Bekins* case, and which principle was not abandoned by anything said in the *Bekins* case, that the valid, binding and unpaid debt obligations of a sovereign State, or its subdivision are no more subject to federal intervention and revocation, whether with or without State consent, than are federal obligations subject to State control by a simple State law.

Petitioner's claim constitutes an irrevocable promise by the State of California, acting through its governmental agency the Irrigation District (respondent here) to publicly collect, by way of a direct annual *ad-valorem* land tax, enough of the rents, issues and profits stemming from this trust of land to pay all lawful contracts of the respondent, with statutory interest, until they are all paid.

Such obligations have the legal force and effect of a continuing encumbrance upon the rent of restricted land, ranking wholly ahead of mortgages, even if pre-existing. This restricted land is therefore in the same status, as the land involved in *N. W. University v. Miller,* 99 U. S. 309 in that the sale or rent of the dedicated land aids the purpose of the controlling law. Such land is "State owned" and can not be taxed by a county. (*Anderson Cottonwood Irrigation District v. Klukkert,* 13 Cal. (2d) 191. (1939).)

As observed by Thomas Paine in "Agrarian Justice" (1796):

> "Every proprietor, therefore, of cultivated land owes to the community a ground rent, for I know of no better term to express the idea by, for the land which he holds; and it is from this ground rent that the fund proposed in this plan is to issue * * *".

Thomas Jefferson envisioned our current land problems, when he wrote:

> "Whenever there are in any country uncultivated lands and unemployed poor, it is clear that the laws of property have been so far extended as to violate natural right." (Writings, Monticello Ed., Vol. 19, p. 18.)

The effect of the decree in this case, should it stand, would only be to feed and strengthen feudal interests and forces, and to widen the moat protecting special privilege and monopoly, thus denying to some persons the "equal protection" of the laws, and at the same time denying to petitioner, as a *cestui que trust* the protection of the federal and California Constitutions, as construed and applied by this Court in the *Fallbrook* case, supra, and by the California Supreme Court, and not reversed by anything adjudicated in the *Bekins* case.

PRAYER.

For the foregoing reasons, your petitioner prays that a writ of certiorari issue out of this Court to the United States Circuit Court of Appeals for the Ninth

Circuit commanding said Court to certify and send to this Court on a day to be determined full and complete transcripts of the records of all of the proceedings of such Circuit Court of Appeals had in both the petitions filed by the respondent under the original and amended Chapter IX of the Bankruptcy Act, to the end that these causes may be reviewed and determined by this Court; that the judgment of the Circuit Court of Appeals be reversed; and that petitioner be granted such other and further relief as may to this Court appear just and proper.

Dated, San Francisco, California,
May 5, 1948.

Respectfully submitted,
J. R. MASON,
Petitioner in Propria Persona.